

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

TRAVELERS CASUALTY INSURANCE COMPANY
OF AMERICA,

Plaintiff,

v.

No. 2:24-cv-0027 MV/DLM

NEW MEXICO BONE AND JOINT INSTITUTE, P.C.,
AMERICAN FOUNDATION OF LOWER EXTREMITY
SURGERY AND RESEARCH, INC., a New Mexico
Corporation, RILEY RAMPTON, DPM, LOREN K.
SPENCER, DPM, Tervon DORSEY, individually,
KIMBERLY DORSEY, individually, and KATE FERLIC
as GUARDIAN AD LITEM for K.D. and J.D., MINORS,

Defendants.

**MEMORANDUM OPINION AND ORDER ADOPTING
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on: (i) United States Magistrate Judge Damian Martínez's Proposed Findings and Recommended Disposition (PFRD) filed November 7, 2024 (Doc. 47); and (ii) the Dorsey Defendants'¹ Objections filed November 21, 2024 (Doc. 48). In the PFRD, Judge Martínez recommends denying the Dorsey Defendants' Motion to Dismiss. (*See* Doc. 47 at 1.) Based on the Court's de novo determination of the issues the Dorsey Defendants raise in their Objections and after reviewing de novo the relevant law, the Court will **OVERRULE** the Objections, **ADOPT** the PFRD, and **DENY** the motion to dismiss.

¹ The Dorsey Defendants, referred to as the State Plaintiffs in the PFRD, include Tervon Dorsey, Kimberly Dorsey, and Kate Ferlic as guardian ad litem for K.D. and J.D., minors.

I. Background

Plaintiff Travelers Casualty Insurance Company of America filed a declaratory judgment action in this Court seeking a declaration on whether an insurance policy it issued to Defendant New Mexico Bone and Joint Institute, P.C. (NMBJI) requires it to defend or indemnify its insureds in an underlying state lawsuit. (*See* Doc. 47 at 1; *see also* Doc. 1.) Travelers and its insureds have filed cross-motions for judgment on the pleadings. (Docs. 3; 25.) The Dorsey Defendants—plaintiffs in the state case—move to dismiss Travelers’ lawsuit or to stay it pending resolution of certain fact issues in the state court. (*See* Doc. 20.) The Court referred the motion to dismiss to Judge Martínez. (*See* Doc. 41.)

In the PFRD, Judge Martínez examined the *Mhoon* factors to analyze whether the Court should exercise its discretion to decide Travelers’ declaratory judgment action. (*See* Doc. 47 at 6 (discussing *State Farm Fire & Cas. Co. v. Mhoon*, 31 F.3d 979 (10th Cir. 1994)).) Judge Martínez found that this case “present[s] a close call[: t]he first two *Mhoon* factors weigh in favor of exercising jurisdiction, the third factor is neutral, and the fourth and fifth factors weigh slightly against exercising jurisdiction.” (*Id.* at 13.) Noting that “both the insurance company and its insureds are ready to proceed in this Court” and that the Dorsey Defendants “have neither found precedent that would require the Court to [stay or dismiss] . . . nor . . . convincingly outlined factual issues that preclude the Court from deciding Travelers’ lawsuit[,]” Judge Martínez recommended denying the motion to dismiss and proceeding with the cross-motions for judgment on the pleadings. (*See id.*)

The Dorsey Defendants generally object to the PFRD. (*See* Doc. 48.) Having considered the Dorsey Defendants’ objections de novo, the Court finds no reason to depart from the recommended disposition.

IT IS THEREFORE ORDERED that:

1. The Dorsey Defendants' Objections (Doc. 48) are **OVERRULED**;
2. The PFRD (Doc. 47) is **ADOPTED**; and
3. The Motion to Dismiss (Doc. 20) is **DENIED**.



MARTHA VÁZQUEZ
SENIOR U.S. DISTRICT JUDGE